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FILED
FEB 14 2003
CLERK

Nos. 02-241 and 02-516

In The
Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, et al.,

Respondents.

JENNIFER GRATZ AND PATRICK HAMACHER,

Petitioners,

v.

LEE BOLLINGER, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF CARNEGIE MELLON UNIVERSITY AND 37 FELLOW PRIVATE COLLEGES AND UNIVERSITIES AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST

Amici Carnegie Mellon University, American University, Belmont University, Boston College, Brandeis University, Bucknell University, California Institute of Technology, Case Western Reserve University, College of the Holy Cross, DePaul University, Dickinson College, Drexel University, Duquesne University of the Holy Spirit, Elizabethtown College, Emory University, Fairleigh Dickinson University, Gettysburg College, Goucher College, Johns Hopkins University, Marquette University, New School University, New York University, Northwestern University, Occidental College, Pepperdine University, Rhode Island School of Design, Saint Louis University, Syracuse University, The Catholic University of America, The George Washington University, The University of Notre Dame du Lac, The University of Miami, The University of Rochester, The University of San Francisco, The University of Scranton, Villanova University, Washington and Lee University, and Washington University in St. Louis submit this brief in support of Respondents.[1] *Amici* respectfully urge the Court to affirm, in accordance with Justice Powell's opinion in *Regents of the University of California v. Bakke,* 438 U.S. 265 (1978), that some consideration of race, as one of many factors in the selection of students for admission to a college or university, comports with the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S. § 2000d *et seq.*

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[1] This brief is submitted with the consent of the parties. Pursuant to Rule 37.6, *Amici* affirm that no party or their counsel authored, or paid for, this brief in whole or in part.

Amici are selective private colleges and universities of national and international prominence. As the appended individual statements of interest show, *Amici* differ markedly in their educational missions, philosophies and constituencies. Some offer undergraduate and graduate degrees in a wide range of subjects and professions. Others emphasize highly specialized fields, such as mathematics, the physical sciences, or the arts. Still others pursue spiritual, as well as academic goals.

Amici are united in their pursuit of excellence in education, and believe meaningful diversity among their students, including racial diversity, is essential to that shared commitment. Long before Justice Powell's opinion in *Bakke*, *Amici* sought to achieve racial diversity on their campuses. *Amici* have done so not because they believe students of the same race have the same point of view, but because race is one of many factors that contribute to each student's perspective and enriches interactions among students.

Achieving meaningful diversity is challenging and an undertaking to which *Amici* have devoted, and continue to devote, substantial resources. *Amici* must make difficult choices because they receive many more applications from qualified students than they are able to accept for enrollment. This affords *Amici* the opportunity, and places upon them the responsibility, to consider how the admission of each candidate would enhance the character and quality of their institution. *Amici*, therefore, evaluate every candidate for admission as an individual, taking into account an array of factors that reflects their institution's educational mission. *Amici* have avoided any sort of quota system and do not endorse such a system.

Amici have also learned that admissions decisions based on racially "neutral" factors alone – like socioeconomic status or geographic origin (which *Amici* also take into account) – almost always fail to produce meaningful racial diversity. While public university systems with large enrollments and multiple campuses may be able to achieve some diversity through race "neutral" programs that guarantee admission to large numbers of students, such programs simply will not work for private colleges and universities with limited enrollments, a single campus, and students from around the world.

Amici do not view grade point averages or test scores as the sole measures of a candidate's qualification for admission, but consider many additional attributes to determine the students who best "fit" their institution. While recognizing the importance of grades and test scores, many *Amici* have declined admission to high school valedictorians and students with perfect SAT scores when other candidates had stronger qualifications for admission measured more broadly. *Amici* also believe the challenges of racial diversity are best met directly and openly through some consideration of race in evaluating individual candidates for admission, and they fail to see how it is preferable to use race "neutral" proxies to try to achieve what is unquestionably a "racial" goal.

For *Amici*, the essential question is whether our nation desires significant inclusion of African Americans, Latinos and Native Americans in selective colleges and universities. If so, *Amici* respectfully submit this compelling goal cannot be achieved without some consideration of race in the selection of students for admission.

ARGUMENT

A. The Court Should Reaffirm Justice Powell's Opinion In *Bakke* That Diversity, Including Racial Diversity, Serves Compelling Interests In Excellence, Leadership, And Experimentation In Higher Education

Justice Powell eloquently explained in *Bakke* why "[t]he attainment of a diverse student body," including a racially diverse student body, "is a *constitutionally permissible* goal for an institution of higher education." *Bakke*, 438 U.S. at 311-12 (emphasis added).

First, "[a]cademic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment" and embraces "'the four essential freedoms' of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Id.* at 312 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J. concurring)). As Justice Powell observed, a "robust exchange of ideas" is of "transcendent value to us all," and an institution seeking the right to select "those students who will contribute the most" to such an exchange must be viewed as "seeking to achieve a goal that is of paramount importance in the fulfillment of its mission." *Id.* at 313.

Second, "[t]he atmosphere of 'speculation, experimentation and creation' – so essential to the quality of higher education – is widely believed to be promoted by a diverse student body." *Id.* at 312. Indeed, "[f]ew students and no one who has practiced law would choose to study in an academic vacuum removed from the interplay of ideas and

the exchange of views with which the law is concerned." *Id.* at 314.

Third, graduates should be equipped "to render with understanding their vital service to humanity." *Id.* Further, "it is not too much to say that the 'nation's future depends upon leaders trained through exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Id.* at 313 (quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)).

Since *Bakke*, the Court has never wavered in its recognition of the unique role higher education serves in our society. In *Metro Broadcasting*, Justice Brennan, speaking for the Court, reiterated that "'a diverse student body' contributing to a 'robust exchange of ideas' is a 'constitutionally permissible goal' on which a race-conscious university admissions program may be predicated." *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 568 (1990) (quoting *Bakke*, 438 U.S. at 311-12), *overruled on other grounds, Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). Similarly, in *Wygant*, Justice O'Connor stated in concurrence, "although its precise contours are uncertain, a state interest in the promotion of racial diversity has been found sufficiently 'compelling,' at least in the context of higher education, to support the use of racial considerations in furthering that interest." *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 276 (1986) (O'Connor, J., concurring).

For the 25 years since *Bakke*, diversity within a student body, including racial diversity, has been widely acknowledged as a compelling goal for higher education. The regulations implementing Title VI, for example, follow *Bakke* and expressly provide that when an institution's

programs and services are "not in fact equally available to some racial or nationality groups," the institution "may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups." 34 C.F.R § 100.5(i). "For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide such group with more adequate service." *Id.* Title VI funding has opened the door to higher education for many qualified students, and *Amici* have relied on its regulatory framework and funding to ensure their campuses are open to qualified students of diverse races and backgrounds.

In the cases now before the Court, there is no credible dispute as to the truths spoken by Justice Powell in *Bakke* – that a racially diverse student body serves and enriches the higher education of *all* students and is essential to the training of leaders for our pluralistic world. Indeed, the evidence that meaningful interaction among students of different racial backgrounds improves the quality of education for all students is extensive and unchallenged. *Grutter v. Bollinger*, 288 F.3d 732, 759-769 (6th Cir. 2002) (Clay, J., concurring). As former Princeton University President, William G. Bowen, has observed:

> [A] great deal of learning occurs informally. It occurs through interactions among students of both sexes; of different races, religions, and backgrounds; who come from cities and rural areas, from various states and countries; who have a variety of interests, talents and perspectives; and who are able directly, or indirectly, to learn from their differences and to stimulate one another to reexamine their most deeply and widely held assumptions about themselves and their world. As a wise graduate of ours observed in commenting on this aspect of the educational process, 'People do not learn very much when surrounded only by the likes of themselves.'

William G. Bowen, "Admissions and the Relevance of Race," *Princeton Alumni Weekly* 7, 9 (September 26, 1977).

The *amicus* briefs filed in support of petitioners thus acknowledge the importance of ensuring that educational institutions "are open and accessible to a broad and diverse array of individuals, including individuals of all races and ethnicities" and of "[m]easures that ensure diversity, accessibility and opportunity." United States Brf. in *Grutter*, at 9-10. Florida confirms that "because of its ethnically and racially diverse population, Florida has an interest in promoting diversity in higher education." Florida Brf., at 1.

If, as acknowledged by petitioners and their *amici*, the "central purpose" of the Equal Protection Clause is to "create a Nation of equal citizens . . . where race is irrelevant to personal opportunity and achievement" [United States Brf. in *Grutter*, at 13 (citing *Wygant*, 476 U.S. at 277, and *Palmore v. Sidoti*, 466 U.S. 429, 432 (1986)], it is unimaginable that this clause precludes colleges and universities from fostering the same goal when composing a learning environment for all students. Equal opportunity for citizens of all races does not require indifference to race; instead, it requires appreciation and mutual respect that can only be achieved through productive and robust interaction. *See* William G. Bowen & Derek Bok, *The Shape of the River*, at 7 (1998) ("Enrich[ing] the education of all . . . students by including race as another element in

assembling a diverse student body of varying talents, backgrounds, and perspectives" is a goal shared by institutions of higher learning, business, and government alike, in part because of our Nation's increasingly heterogeneous society.)

Diversity on campus, moreover, assures *Amici's* responsiveness to their communities. Without exception, *Amici* have learned that their students and supporters *expect* the enriched and robust academic exchange that can be achieved only on a campus of diverse students. *See* William G. Bowen & Neil L. Rudenstine, *Race-Sensitive Admissions: Back to Basics*, at 2-3 (February 3, 2003) *available at* http://www.mellon.org/publications/Admissions/load.htm (explaining that survey responses from more than 90,000 alumni of selective institutions show "nearly 80 percent of those enrolled in 1976 and 1989 felt their alma mater placed the right amount of emphasis – or not enough – on diversity in the admissions process").

Amici do *not* include race as part of their quest for diversity because they believe each member of a racial minority has the same point of view. To the contrary, *Amici* recognize race as one of the innumerable factors that ineluctably affect and mold a student's perspective and individuality. In honoring Justice Thurgood Marshall, Justice O'Connor observed that he brought to the Court "a special perspective" because he was intimately familiar with the plight of those who regularly encountered racial discrimination. Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 Stan. L. Rev. 1217, 1217 (1992). No one would suggest Justice Marshall brought a pre-ordained "African American" perspective to the Court – there is no such thing. Rather, he brought his own

perspective that was necessarily shaped in some measure by his race. Thus, racial diversity is not meant to bring, and does not bring, a "racial" perspective to higher education. It *does* ensure, however, the wide array of students needed to fulfill higher education's promise of "speculation, experimentation and creation." *Bakke*, 438 U.S. at 312.

B. The Court Should Reaffirm Justice Powell's Opinion In *Bakke* That Race May Be Considered, As One Of Many Factors, In A Narrowly Tailored Effort To Achieve Meaningful Diversity In Higher Education

In considering whether a race-sensitive measure is "narrowly tailored" to achieve a compelling interest, the courts must determine (1) whether that interest can be achieved through race-neutral alternatives and (2) the harm imposed by the measure. *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 510 (1989). Petitioners and their *amici* argue even limited consideration of race when reviewing candidates for admission is never appropriate because race-neutral means to achieve meaningful diversity are always available. To that end, petitioners and their *amici* point to guaranteed admissions programs used by some large public universities and to supposedly race-neutral criteria they claim could be used to enroll a diverse student body.

Whether or not these race-neutral strategies work for large public university systems, they could *not* work for selective private colleges and universities. The limited size of private colleges and universities makes any guaranteed admissions program unworkable, much less the programs adopted by California, Texas, and Florida, which guarantee

admission to the top four, 10 and 20 percent of graduating seniors within their states, respectively. Those public university systems each enroll over 100,000 students at multiple campuses. Even if every graduating high school senior eligible under those state programs elected to enroll, these massive university systems could accommodate them. California Institute of Technology, however, enrolls only 942 undergraduate students at a single campus. Even the largest *Amicus* could not accommodate a fraction of the candidates who would be eligible for guaranteed admission based on class rank.

Nor were *Amici* established to serve only local residents or other limited pools of candidates. The California, Texas and Florida public university systems serve their respective taxpayers and thus confine their guaranteed admissions to high schools within their state. But *Amici* recruit nationally and internationally. Thus, they cannot limit the pool of high schools that offer candidates for admission.

Guaranteed admissions would also destroy one of the most important contributions *Amici* make to our system of higher education – their individuality and uniqueness of academic mission. The optimal mix of students differs from school to school. A small liberal arts college may seek a different assortment of students than a flagship state university. A college that focuses on the performing or fine arts may place a premium on applicants' musical or artistic interest and ability. A college that emphasizes agricultural studies may recruit candidates with farming or ranching backgrounds. A sectarian institution may consider demonstrated religious conviction as important

as grades and test scores. Thus, not only does their size preclude the use of admission programs based on class rank, but *Amici* have no desire to guarantee admission to *any* subset of candidates identified by a simple litmus test.

Moreover, to a large degree, the touted success of the "race-neutral" admissions programs offered by California, Texas and Florida university systems is illusory. Those programs fail to achieve the fundamental goal of diversity in education – to enrich the education of *all* students by exposing them to an array of experiences, perspectives, and social interactions, including some related to race. For example, the United States asserts that the California, Texas and Florida "percent" programs enhance diversity within their university "systems." United States Brf. in *Grutter,* at 17-21. But a state "system" of public universities (*e.g.*, 33 campuses in two California systems, 27 campuses in three Texas systems, and 11 public universities in Florida) is *not* a proper benchmark for diversity. Students at one campus in a state "system" have no greater exposure to students at another campus in the same "system," than they have to students at any other distant campus. Only diversity on a *campus* matters.

Yet, in California, Texas and Florida, diversity has *decreased* at their most selective, and prominent, campuses. *See* Catherine L. Horn and Stella M. Flores, *Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences*, The Civil Rights Project Harvard University, at 58 (February 2003) *available at* http://www.civilrightsproject.harvard.edu/research/affirmativeaction/tristate.pdf ("The percent plans seem to have the least impact on the most competitive campuses, which have persisting losses in spite of many levels of efforts to

make up for affirmative action."); Brian Bucks, *Affirmative Access Versus Affirmative Action: How Have Texas' Race-Blind Policies Affected College Outcomes?* at 6 (February 5, 2003) *available at* http://www.utdallas.edu/research/greenctr/Papers/pdfpapers/paper33.pdf (showing that under Texas' program, the number of African American students attending the state's flagship schools has fallen roughly 45 percent and the number of Hispanic students has fallen roughly 30 percent); Patricia Marin and Edgar K. Lee, *Appearance and Reality in The Sunshine State*, The Civil Rights Project Harvard University, at 36 (February 2003) *available at* http://www.civilrightsproject.harvard.edu/research/affirmativeaction/florida.pdf ("Even a brief discussion of the policies and practices on the state's two most selective campuses reveals a strikingly different picture than that portrayed by state leaders. There is simply no evidence that the Talented 20 program had any significant impact in dealing with the termination of affirmative action in admissions on these campuses.").

Further, the California, Texas, and Florida admissions programs are not, in fact, "race neutral." Those programs depend entirely upon continued segregation among the states' high schools. *See* John F. Kain & Daniel M. O'Brien, *Hopwood and the Top 10 Percent Law: How They Have Affected the College Enrollment Decisions of Texas High School Graduates*, at 30-31 (February 5, 2003) *available at* http://www.utdallas.edu/research/greenctr/Papers/pdfpapers/paper26.html ("[A]nother disturbing feature of [Texas'] top 10 Percent Law is its dependence on school and residential segregation to achieve the goal of increasing the representation of disadvantaged minorities at the state's selective public universities."); *Race-Sensitive Admissions: Back to Basics*, at 13-15 ("[D]o we really want to endorse an

admissions approach that depends on de facto segregation at the secondary-school level?").

Nor are admissions programs that focus solely on grades and class rank educationally sound. Such programs cut across a state's graduating high school class with the refinement of a meat ax: they exclude well qualified minority students who attended competitive secondary schools, while including lesser qualified minority students from lower performing schools. They may also reward students for taking "easy" classes or remaining at inferior high schools to maintain high grade point averages, while punishing students who accept the challenge of advanced classes or highly competitive schools.

In contrast to rote, guaranteed admissions programs, selective colleges and universities evaluate individuals, rather than statistics. The "best" grades do not necessarily mean the "best" qualified for admission to a college or university. While high school academic success is an important factor, *Amici* look at considerably more – like the applicant's curriculum, writing skills, extra-curricular activities, artistic talents, athletic ability and leadership skills – to decide which students best "fit" their mission and philosophy. *Race-Sensitive Admissions: Back to Basics*, at 4-5, 8-9; *The Shape of the River*, at 24-25 ("[O]ne often hears that students with top scores and the highest grades should be admitted "on the merits," as if these measures were the sole legitimate basis for admission and that other considerations were somehow insubstantial or even morally suspect. This is patently false. Deciding which students have the most 'merit' depends on what one is trying to achieve.").

Amici also cannot ignore the racially disparate impact of other factors commonly considered in admissions decisions. The College Board, which administers the SAT's, publishes data on its website demonstrating that, among college-bound seniors taking the tests in 2002, the differences between the mean scores for "White" students and for African-American students were 97 points for Verbal and 106 points for Math, out of a maximum of 800 points on each test. http://www.collegeboard.com/prod_downloads/about/news_info/cbsenior/yr2002/pdf/threeC.pdf. Two percent of the African American students taking the test last year scored above 650 in either Verbal or Math, while the comparable figures for White students were 12 percent and 15 percent, respectively. *Id.* Similar, if somewhat less dramatic, disparities in test scores also hamper Native American and Hispanic students. *Id.* High school grades, another seemingly race-neutral factor, also can disadvantage qualified minority applicants. According to the College Board, African Americans, Latinos and Native Americans, apply to college with notably lower grade point averages than do non-minority students. *See* http://www.collegeboard.com/press/releases_main.

Amici are acutely aware that such allegedly race-neutral factors tend to skew admissions against meaningful diversity, and thus are unanimous in considering race as one positive factor, among many factors, in admissions decisions. Through years of admitting minority students based on their overall qualifications, and not solely their grades and test scores, *Amici* have proven that these students prosper in, and make unique contributions to, higher education.

Some have suggested *Amici* could use proxies for race, like low income or social disadvantage, to enhance minority enrollment on their campuses. But *Amici* already consider, and give appropriate weight to, such factors. Moreover, income is simply a poor proxy for race. In a study of 1992 high school graduates, the Brookings Institution found that, among high school graduates with family incomes below $20,000 and test scores in the top 10 percent, only one in six was African American. Thomas J. Kane, "Racial and Ethnic Preferences in College Admissions," in *The Black-White Test Score Gap,* at 431, 450 (Christopher Jencks and Meredith Phillips eds., 1998). Thus, as Bowen and Bok observe, the "substitution of a class-based system would drastically reduce the quality of the eligible pool of Black and Hispanic applicants, seriously impeding the goal of preparing the ablest minority leaders for society and the professions." *The Shape of the River*, at 51.

Because "race neutral" admissions plans cannot achieve the compelling need for diversity in higher education, the Court must consider whether *Amici's* limited consideration of race, as one of many factors, in selecting students for admission imposes "*disproportionate* harm on the interests, or *unnecessarily* trammel[s] the rights, of innocent individuals directly and adversely affected by [such] racial preference." *Wygant*, 476 U.S. at 287 (emphasis added) (O'Connor, J., concurring). Here, the relevant inquiry is *not* whether an applicant would have been admitted had he or she been a member of an underrepresented minority, but whether he or she would have been admitted had race not been considered at all. Viewed in this light, *Amici's* admissions programs plainly withstand strict scrutiny since they have a negligible impact on

other students' chances of admission. *The Shape of the River,* at 9 (finding limited consideration of race at a subset of selective colleges and universities reduced majority applicants' prospects for admittance from 26.2 to 25 percent); *Race-Sensitive Admissions: Back to Basics,* at 9-11.

Finally, if a diverse student body is a compelling goal in higher education – as most agree – *Amici* believe it far better to pursue diversity directly and honestly, rather than by proxy. "Surely the best way to achieve racial diversity is to acknowledge candidly that minority status is one among many factors that can be considered in an admissions process designed to judge individuals on a case-by-case basis." *Race-Sensitive Admissions: Back to Basics*, at 16.

C. The Court Should Preserve Academic Freedom And The Spirit Of Experimentation Vital To Higher Education By Preserving The Ability Of Colleges And Universities To Consider Race As One Of Many Factors When Selecting Students For Admission

Our colleges and universities, like our Nation as a whole, continue to struggle with the legacy of racism and bigotry. If higher education is to contribute to the understanding and eradication of that legacy, it must explore it and challenge it – not merely as a historical artifact, but as a dynamic characteristic of contemporary society. Like the search for excellence in education itself, which admits no single path or model, the pursuit of diversity and understanding in higher education should be left to colleges and universities that "perform their role as laboratories for experimentation to devise various solutions where

the best solution is far from clear." *United States v. Lopez,* 514 U.S. 549, 581 (1995) (Kennedy, J., concurring).

Amici, as private, not public, institutions of higher education, have a special role in this quest. As Chief Justice Marshall observed nearly two hundred years ago in *The Trustees of Dartmouth College v. Woodward,* 17 U.S. 518, 634 (1819), private colleges and universities benefit our Nation by charting their academic missions free of political pressures and exigencies. "The eleemosynary institutions do not fill the place which would otherwise be occupied by government, but that which would otherwise remain vacant. . . . It is probable that no man ever was, and that no man ever will be, the founder of a college, . . . believing that it is immediately to be deemed a public institution, whose funds are to be governed and applied, not by the will of the donor, but by the will of the legislature." *Id.* at 647.

Our private colleges and universities have long made beneficial use of their academic freedom to foster and achieve meaningful diversity. In fact, many *Amici* were founded in response to the bigotries of the day and to embark on the quest for equality to which they remain committed today. For example:

- Dickinson College was founded in 1783 by Dr. Benjamin Rush, a signer of the Declaration of Independence and one of the country's earliest proponents of student diversity. A staunch abolitionist who helped establish the first African-American church in Philadelphia, Dr. Rush encouraged students to study modern languages and foreign cultures.

- Gettysburg College was founded in 1832 by abolitionist Samuel S. Schmucker under the name Pennsylvania College. Another well-known abolitionist, Thaddeus Stevens, author of the Fourteenth Amendment, provided the College's original six acres.

- Brandeis University was founded in 1948 by the American Jewish Community in part to respond to quotas limiting the access of Jews to higher education.

Thus, *Amici* are progenitors of and heirs to our Nation's commitment to openness and inclusion. *Amici* continue to invest themselves in this undertaking, taking the time and committing the resources to consider many factors, including race, in deciding who they will admit to their institutions. As a result, they have fostered innovation, leadership, and academic excellence, while infusing our national commitment to higher education with the vibrancy of their own diversity.

CONCLUSION

Amici do not suggest every college or university must consider race in the same way, or even at all, when selecting students for admission. They do suggest, however, that selective private colleges and universities cannot achieve meaningful diversity on their campuses without continuing to have that academic tool at their disposal. Whatever the Court may believe might work in large public university systems, *Amici's* circumstances are significantly different. *Amici* respectfully ask the Court to allow them

to continue to steer the course of the river shaped by *Bakke* for the good of their students, their respective institutions, and our Nation.

Respectfully submitted,

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APPENDIX: INDIVIDUAL STATEMENTS OF INTEREST OF *AMICUS CURIAE*

CARNEGIE MELLON UNIVERSITY

Carnegie Mellon University is a national research university of approximately 8500 students and 3000 faculty, research and administrative staff. Based in Pittsburgh, Pennsylvania, Carnegie Mellon comprises seven colleges and schools, including the Carnegie Institute of Technology (the college of engineering), the College of Fine Arts, the College of Humanities and Social Sciences, the Mellon College of Science, the Graduate School of Industrial Administration, the School of Computer Science, and the H. John Heinz III School of Public Policy and Management. Especially in technology, business, public policy and the arts, Carnegie Mellon University is among our nation's leading institutions of higher learning.

Under the leadership of its President, Jared L. Cohon, Carnegie Mellon University has made diversity, and the vitality it brings to the university and its students, one of its top strategic priorities. Dr. Cohon explained, in his 1999 Statement on Diversity, that:

> Diverse perspectives and backgrounds breed the intellectual vitality essential for the health and progress of the university. Indeed, Carnegie Mellon has earned a reputation for interdisciplinary collaboration which has spawned important innovations in research, education and institutional structure. It seems obvious that the people collected at any moment in time will necessarily shape the nature and the outcome of those collaborations and those people are influenced not only by their intelligence and creativity but also by their backgrounds.

> Simply put, becoming more diverse will make Carnegie Mellon and the work it does better. Certainly, our students will be better-educated for having learned and lived in a multicultural community. Our research and service will be different – and some of it better in its transfer to and impact on society – as a result of the multiple perspectives brought to us by diversity. And, I believe, we can be a more effective organization when diversity is an attribute of our trustees, administration and staff.

http://www.cmu.edu/president/diversity.html. In 1999, moreover, the University established its Diversity Advisory Council to identify initiatives, build awareness of diversity issues and support for the university's initiatives, and monitor progress. The Council, chaired by Dr. Cohon, includes students, faculty, staff, administrators, trustees, alumni and leaders of the Pittsburgh community, and it annually reports on the state of diversity at the University.

Along with a doubling in its applications for admission over the past decade, and increased selectivity in admissions, Carnegie Mellon has endeavored, and will continue to endeavor, to create an inclusive campus that fosters excellence in education and research, and that enriches its students, faculty, and staff. In this pursuit, the University strives to assure every individual the opportunity to reach her or his potential, to feel a sense of belonging, and to make contributions that are valued and respected.

Carnegie Mellon has greatly increased its diversity, yet its strives for more. In keeping with this goal, Carnegie Mellon considers race, as one of many factors, in its selection of qualified students for admission. In the fall of 2002, minority representation in the university's freshman

class was 12 percent, up from 9 percent the year before. Equally important, minority students enrolled at Carnegie Mellon have generally succeeded at levels comparable to non-minority students. In fact, the attrition rate for the freshman class of 2001 was lower for minority students – less than 2 percent – than for any other group.

Carnegie Mellon University respectfully urges the Court to reaffirm its authority to consider race as one factor in its decisions on admissions, which has allowed it to seek meaningful diversity among the talented students it enrolls each year and, thereby, to enhance its excellence in education, research and service to our nation.

AMERICAN UNIVERSITY

American University was chartered by an Act of Congress in 1893 and founded under the auspices of The United Methodist Church. It has a long and distinctive tradition of affirming the values of human rights and dignity, social justice, individual freedom, and diversity. It is one of the most diverse universities in the country, with students from all 50 states and more than 160 countries. The success of its educational enterprise rests upon a unique blend of academic programs with ideas and perspectives provided by people from very diverse backgrounds. This diversity is integral to the unique identity and offerings of the University.

As "a private university with a public responsibility," the University is committed to preparing leaders who are broadly educated, spiritually deep, passionately engaged, and capable of translating in a complex environment the lasting values that are the hallmarks of a humane and civilized world. As a global university, American University

actively promotes international understanding. This is reflected in the make-up of its student body and faculty, the international scope of its programs in dozens of countries, its curriculum, the research of its faculty, assistance to governments and societies throughout the world, and the regular presence of world leaders on campus.

American University believes that a key ingredient in accomplishing its obligations to prepare global citizens and leaders is to ensure the direct engagement of its students with diverse peoples, cultures, ideas, and traditions. This rich diversity of educational experience is assured by allowing, among other factors, the consideration of race in evaluating an applicant for admission to the University. The resulting diversity enhances the academic inquiry and discourse that enlivens and sustains the special character of the American University experience, providing our students with a deeper understanding of an equally diverse world.

BELMONT UNIVERSITY

Belmont University, located in Nashville, Tennessee, is a comprehensive teaching university bringing together the best of liberal arts and professional education in a Christian community of learning and service. Belmont offers undergraduate degrees in 57 major areas of study and graduate degrees in nine disciplines. The university's mission is to be a student-centered Christian community providing an academically challenging education that enables men and women of diverse backgrounds to engage and transform the world with disciplined intelligence, compassion, courage and faith. As a Baptist-affiliated institution in the South, Belmont feels a special responsibility to

carry out this mission by pursuing programs of recruitment and enrollment that insure the student body is as ethnically and racially diverse as possible. The University believes it cannot effectively fulfill its commitment to be a Christian community of learning and service without affirmative efforts to reflect the diversity of humanity on its campus.

BOSTON COLLEGE

Boston College was founded by the Jesuits in 1863 to serve the sons of Boston's Irish immigrants. Today, as a national Catholic university with 12 undergraduate and graduate schools and colleges, and a multitude of research institutes, Boston College serves the sons and daughters from the United States and 102 nations. Through more than 13 decades of growth and change, the University has held fast to the ideals of its founders to serve as an engine of opportunity for an increasingly diverse population with new resources marshaled to challenge students to become good citizens of the world – by putting knowledge into action for future generations.

The transformational mission of teaching and research is, at its core, dependent upon harnessing the contributions of students: rich and poor; majority and minority; immigrant, international, and native born. To continue to evolve and serve changing future populations, colleges must be able to pursue their unique missions without impediments to be effective within a diverse system of higher education. Boston College, must be accorded the autonomy to seek and enroll students who will benefit from this University's advanced and innovative education programs.

The opponents of some current college enrollment policies for building student diversity seem to conceive of college admission as a "winner-take-all competition" in which students with the highest test scores should gain admission to a specific college of their own choosing. These views reflect a fundamental misunderstanding of our educational mission and admission practices. Being required to admit students by a formula, either by test scores or by a percentage plan, would diminish our accumulated expertise and wisdom for making sound educational decisions. Because Boston College is a Catholic university with an explicitly defined service mission, we are in a very strong position to claim the latitude as educational experts and practitioners to pursue a diverse student body on our campus to achieve worthwhile formative and societal goals.

At Boston College, as at most colleges and universities, applicants are assessed individually by an admission committee based upon a number of dimensions. Boston College does not consider race in isolation nor admit students based upon race exclusively. Race should not be singled out as a factor that may not be considered in admission assessments, while geographic location, individual artistic, and other personal characteristics are allowed. Boston College's record of consistently high graduation rates across all student segments is the strongest empirical evidence that our admission practices work to ensure student success, and thereby efficiently produce citizen-leader alumni/ae with the skills to contribute to the nation's interests and aspirations.

Boston College has served well waves of immigrant populations in the Boston area, and will develop emerging talent in this country and internationally to educate

accomplished leaders and professionals. As a Jesuit and Catholic university, we hope to retain admission practices that value the whole person, and that are supported by management tools to validate fairness and effectiveness. Given our historical mission, we seek a close connection with societal needs. Always looking to the future, we also seek to chart a strategic direction for continued excellence and service to others.

Our mission would be materially undermined if Boston College were not able to consider all individual and cultural aspects in assessing potential for students to enter our specialized academic programs. Not considering race, ethnicity, or nationality as part of an individual's credentials and personal biography, would be, in our best judgment, inherently unfair, and result in a less dynamic educational environment by limiting admission assessments of the achievements and academic potential of applicants.

BRANDEIS UNIVERSITY

Brandeis University was founded in 1948 by the American Jewish community as a private, coeducational and nonsectarian institution of higher learning and research. While Brandeis maintains a special relationship with the Jewish community, it is not affiliated with any religious organization and offers no theological instruction. From the first, the University has welcomed students and faculty of all backgrounds and beliefs in fulfillment of a mission that emphasizes academic excellence, the creation and transmission of new knowledge, open and vigorous intellectual inquiry, a commitment to social justice and diversity broadly defined. Brandeis strives to reflect the

heterogeneity of the United States and of the world community in which its graduates will spend the remainder of their lives.

Named for one of America's most distinguished jurists, Brandeis University is passionate about the importance of a broad and critical liberal arts education in enriching the lives of students and preparing them for the fullest possible participation in a changing society. In identifying students for admission, the University seeks to build a select community of men and women who, in its judgment, can best contribute to and benefit from the educational environment and opportunities Brandeis offers. Factors considered for admission, in addition to specific quantifiable measures, include the breadth and rigor of a student's high school program; extra-curricular and co-curricular interests and activities; special talents; evidence of leadership; geography, including country of origin in the case of international students; gender and race, among others.

Diversity in the student body as well as the faculty is judged inseparable from the University's commitment to academic excellence and the creation of a campus community in which vigorous intellectual debate and the free exchange of ideas are paramount values. The quality of academic debate and the exchange of ideas and alternative points of view are directly influenced by the various perspectives and worldviews of the participants. Race, gender, socio-economic status, ethnicity, religion and a variety of life experiences provide a lens through which individuals view ideas, the world and their place in it. To deprive institutions of higher education of the ability to consider students for admission, not on the basis of fixed numerical quotas or rigid guidelines, but on the basis of subjective judgments involving the many factors and

personal characteristics that directly contribute to the academic experience, including such factors as race and gender, would lessen the ability of America's institutions of higher education, both public and private, to provide the rich educational environment that is the envy of the world.

CALIFORNIA INSTITUTE OF TECHNOLOGY

The California Institute of Technology (Caltech) is one of the world's major research centers with an outstanding faculty, including four Nobel Laureates. Caltech conducts instruction in science and engineering for a student body of approximately 900 undergraduates and 1000 graduate students who maintain a high level of scholarship and intellectual achievement. Caltech's mission is to expand human knowledge and benefit society through research integrated with education. Caltech scientists investigate the most challenging, fundamental problems in science and technology in a singularly collegial, interdisciplinary atmosphere, while educating outstanding students.

Although Caltech is known for its quantifiable qualities such as a freshman class with the highest average SAT scores in the Nation, it is the unquantifiable parts of Caltech's culture that contribute greatly to another Caltech goal – helping students develop a realistic view of their future roles as creative members of society. Students at Caltech are encouraged to collaborate with one another in all aspects of their studies in order to foster the collegial and cooperative relationships that stimulate intellectual growth and thought. Diversity enhances this experience since each individual's ideas and viewpoints are influenced by their own life experiences. Caltech feels strongly that a diverse student body enriches the learning environment

for all students. Without a diverse student body, our students will be deprived of the opportunity to broaden their own perspectives by interacting with students whose backgrounds differ from their own, thus placing them at a disadvantage as they make their way in the world. If Caltech was prevented from considering factors such as race, gender, socio-economic status, and life experiences as part of the many factors to be considered in admissions, Caltech will also be prevented from providing the robust educational environment necessary to achieve the highest quality education.

DICKINSON COLLEGE

One of the original 16 colonial colleges, Dickinson College, located in Carlisle, Pennsylvania, is a residential liberal arts college offering undergraduate programs in 39 major fields to young men and women from across the country and around the world. Academic home to 2200 students from 43 states and 23 foreign countries, Dickinson is widely regarded as a highly selective institution of national renown.

According to the Charter of 1783, Dickinson College was founded to empower young people with liberal learning, virtuous principles and preparation for important offices in society so that they might be informed, responsible and active citizens. Dickinson's founder, signer of the Declaration of Independence, Dr. Benjamin Rush, was one of the country's earliest proponents of the need to expose students to diverse populations. A staunch abolitionist who helped establish the first African-American church in Philadelphia, Rush also encouraged students to study modern languages and foreign cultures. Generations of

Dickinsonians have reaffirmed this vision which continues to guide us in the complex world of the 21st century.

Dickinson is, above all, dedicated to giving its students an education that prepares them to become the leaders of a global society that is increasingly diverse and challenging. Through its academic program and student life initiatives, the College strives to create a culture of commitment among its students that is characterized by civility and respect for oneself and others, and that affirms the diversity of persons, ideas and circumstances. Dickinson firmly believes that differing opinions, beliefs, customs and cultures are powerful teachers and that exposing oneself to the unfamiliar encourages one to think, learn, grow and discover. Dickinson's commitment to prepare its graduates to successfully confront the challenges and opportunities of a diverse world is, above all, dependent upon the College's ability to attract a student body that mirrors both national and global diversity. It is imperative, therefore, that Dickinson continue to recruit a diverse student population, including diversity based upon race. While racial diversity is but one of many factors considered in the admissions process, it is an indispensable component of a vibrant and challenging campus community.

Attracting and retaining a student population that is rich in diversity, including racial diversity, has led to the development of unique intellectual and residential programs that are designed to promote greater interaction and understanding among students from diverse backgrounds. These programs include:

- Through the American Mosaic Project, students from a wide range of disciplines engage in a semester of fieldwork immersion in a multicultural community.

Within the past five years, students have focused on the African-American community in Steelton, Pennsylvania and the community of migrant workers in nearby Adams County. Recently, Dickinson added an international component to the Mosaic as faculty and students engaged in a month of archival and oral history collection in Patagonia.

- Funding from the William and Flora Hewlett Foundation has made it possible for Dickinson to create "clusters" of its Freshman Seminar program that directly focus on multicultural and diversity issues. Students from a wide range of backgrounds and academic interests are brought together to encourage vibrant and thought-provoking discussion. The seminars have helped to forge unity and acceptance among students from a variety of backgrounds at the beginning of their collegiate careers. This approach is only possible because the College is able to enroll students from a wide range of racial, ethnic and cultural backgrounds.

- Dickinson is also the recipient of a three-year grant from The Henry Luce Foundation to establish a program in Diaspora and community studies. This project gives students the opportunity to explore the movement of cultures and populations over time, thus integrating two major areas of scholarly concern – global education and the study of America.

- In partnership with Spelman College in Atlanta and Xavier University in New Orleans, the "Crossing Borders" program allows students from the three institutions to study in three locations over the span of one academic year. "Crossing Borders" students begin their yearlong study with a six-week summer program at Dickinson's study center in Cameroon, West Africa. During the fall semester,

the students attend classes at Dickinson and in the spring, Spelman and Xavier students return to their home institutions while Dickinson students attend one of those universities. Through this dynamic experience, students are challenged to make connections between the different cultures and engage in honest and open discussions about cultural identity and diversity.

- Dickinson is also a participant in the "Posse" program. This national program recruits academically qualified students from urban public high schools to attend colleges and universities as a group or "posse." Attending as a "team" allows students to support each other as they adjust to life outside of the city. A recent article in the local borough newspaper praised Dickinson's involvement in the Posse Program indicating that efforts to increase an appreciation of diversity on campus are having an impact on the broader community as well.

- Under the auspices of the Office of Multicultural Affairs, a team of six undergraduate students provides the campus community with opportunities to broaden their views of the world through diversity education, programming, community outreach and leadership development.

Dickinson's commitment to "engage the world" and to ensure that its students receive every opportunity to understand, appreciate and accept the diversity of our society is integrated into every aspect of our academic and residential life programs. The design and success of these efforts are dependent upon the College's ability to enroll a student body that is as ethnically, culturally and racially diverse as the broader society in which we live.

DREXEL UNIVERSITY

Drexel University was founded upon the principle of diversity as an educational goal, and it remains committed to that principle today. In 1892, noted financier, philanthropist, and advisor to U.S. Presidents, Anthony J. Drexel created the **Drexel Institute Art, Science and Industry** to provide *higher education to men and women of the working class* – people who were not welcome in the colleges and universities of that day. A.J. Drexel envisioned a learning environment in which young men and women, on an equal basis, would learn skills and acquire knowledge in subjects that would prepare them for rewarding careers. Engineering and technology was then, and remains today, one of the best routes to economic security. **Woman's Medical College of Pennsylvania**, now Drexel University College of Medicine, was created in 1848 by prominent leaders of the medical profession to allow *women to learn the healing arts* at a time when it was unacceptable for women to have lives outside the home. The graduates of "Woman's Med" have practiced medicine in poor and underserved communities for more than 150 years; those women doctors were pioneers in bringing preventive medicine, and medical research, to the benefit of others around the globe.

Today, Drexel University educates its students through experiential learning, combining service with technology, and helps prepare them for leadership roles not only in their chosen professions, but also in their communities. It is very much a part of our educational mission to expose our students to differences in race, gender and class, to help them learn to appreciate what difference offers, and to teach them to recognize and overcome bias, prejudice and discrimination, so that they

may understand that our diversity creates our richness and strength as a nation and as a people. Drexel's cooperative education program encourages students to learn how to work together by placing them in real business settings – communities that, by their nature and as a result of the globalization of commerce and industry, are increasingly diverse. Drexel's curriculum requires that every first-year student participate in the Anti-Defamation League's nationally-renowned "A World of Difference" program as well as perform public service in the Philadelphia public schools, which today primarily serve non-affluent, non-white students. Drexel is also a campus affiliate chapter of the National Coalition Institute, an internationally-recognized consortium that is dedicated to eliminating the mistreatment of people due to differences of any kind.

By participating in these programs and by requiring our students to have these experiences, we teach them the true meaning of citizenship – civic engagement and respect for the individual. But that is simply not enough. We know that the best, most durable education comes from the students themselves. These critically important lessons demand that our students reflect the diversity of the communities in which they will live and work. By creating a diverse student body, we have not compromised academic standards in the slightest – indeed, the average SAT scores of our students have climbed steadily over the past seven years as we have added new programs focused on encouraging minority students to attend and succeed. We have embraced diversity because we know that there is no other way to ensure that our students are properly prepared for a diverse world when they leave academia. Race must be a factor in that education. There is simply no

other way to strengthen our nation. For that reason, we will continue to honor our Founders' visions and create a purposefully diverse student community as an essential part of our educational mission.

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

Duquesne University of the Holy Spirit, located in Pittsburgh, Pennsylvania, is a Catholic University founded by the Congregation of the Holy Spirit in 1878. Duquesne offers programs in 10 schools, including Business, Liberal Arts, Leadership, Natural and Environmental Sciences, Law, Education, Health Sciences, Pharmacy, Nursing and Music, and has a current enrollment at nearly 10,000 students. The University's mission is to serve God by serving students through commitment to excellence in education, through profound concern for moral and spiritual values, and through the maintenance of an ecumenical atmosphere open to diversity. Duquesne University of the Holy Spirit believes it cannot effectively fulfill this mission without affirmative efforts to cultivate diversity on its campus.

EMORY UNIVERSITY

Emory University is a leading national research university known for its outstanding undergraduate college of arts and sciences, its graduate and professional schools, its demanding academics, and its state-of-the-art research facilities. Emory is a member of the Association of American Universities. Founded by the Methodist Church in 1836, Emory has long been one of the most ethnically and religiously diverse university communities in the United States.

The University awards approximately 3,200 degrees annually and its academic standards are among the nation's highest, as is the caliber of its 11,600 students, including 6,300 undergraduates and 5,300 graduate and professional students, and 2,686 faculty members. Nine out of 10 first-year students are among the top 10 percent of their high school class.

In our admissions and hiring, Emory is committed to diversity and welcomes students, faculty, and staff who are diverse in many ways including ethnicity, race, gender, religion, geography, philosophy, sexual orientation, and physical ability. At the same time, we are unified in our goal of achieving academic excellence and preparing students for life and work in a global society. We strive to offer multicultural education in the curriculum, instruction, and services provided to our students.

Currently, the University attracts students from every state and more than 75 other countries. Approximately 30 percent of our undergraduates are non-Caucasian. The diversity at Emory consistently stimulates and improves the intellectual life on our campus. Maintaining this diversity is critical to the education of our students and their preparation for becoming productive and effective members in our increasingly diverse society.

GETTYSBURG COLLEGE

Gettysburg College is committed to diversity as a core principle. We welcome and respect racial, ethnic and cultural differences. This core principle is deeply rooted in the history of our country and the College, which was founded in 1832 by abolitionist Samuel S. Schmucker under the name Pennsylvania College. Another well-known

abolitionist, College Trustee Thaddeus Stevens, author of the 14th amendment, provided the College's original six acres.

Gettysburg's commitment to diversity comes from all sectors – trustees, administrators, faculty, alumni, parents and students. Gettysburg College affirms its commitment to diversity among faculty, students and staff in order to enrich the educational experience for all and to help prepare our students to become good citizens in our pluralistic society. We hope that the decision by the Court will not make it more difficult for institutions of higher learning to recruit a more diverse student population. Without the ability to consider race as one of many factors that qualify our students for admission, this commitment to diversity cannot realistically be realized under today's social conditions.

GOUCHER COLLEGE

Since its founding in 1885 as the Woman's College of Baltimore, Goucher College has been firmly committed to excellence in liberal arts and sciences education. Goucher was among the first in the nation to introduce independent study, field work, early admissions, accelerated college programs and individualized majors. The College was also one of the first liberal arts institutions in the mid-Atlantic region to abandon old-fashioned quotas that tended to exclude and discriminate against people on the basis of race or ethnicity. Goucher is now a co-educational, residential liberal arts college offering undergraduate majors in 18 departments and five interdisciplinary areas, as well as several graduate programs, to students from across the country and around the world.

A key element of Goucher's educational mission is to help each student develop an appreciation for individual and cultural diversity, a sense of social responsibility and a system of personal and professional ethics. We are committed to the development and education of students who are able to contribute to, participate in and learn from the increasing and diverse cultural groups both on the college campus and in a demographically changing society. One priority of the recently-adopted strategic plan for the College is to support increased diversity on campus and continue to develop an atmosphere of inclusiveness, mutual respect, and acknowledgment that the discussion and critical evaluation of every point of view is crucial to the development of a balanced understanding of the challenges we face and the inquires we undertake. To this end, Goucher is currently striving to increase the diversity of its students, faculty and staff.

Goucher joins this brief because of our strong commitment to diversity among all members of the campus community. We believe that commitment cannot be realized under the restrictions on admission criteria and assessment proposed by the plaintiffs. Our mission will be compromised, and our goals unattained, if we are denied the ability to consider all factors, including race, in the process of evaluating candidates for admission.

NEW SCHOOL UNIVERSITY

New School University was founded in 1919 in Greenwich Village in New York City. Today the University is a thriving, urban university with eight schools, some 7,547 students pursuing undergraduate and graduate degrees in the liberal and performing arts, including the

social and political sciences, public policy, classical and jazz and contemporary music, fine and applied art and design, drama, creative writing and media studies. In addition, over 26,000 adult education continuing and non-credit students enroll every year. Located in the intellectual and cultural heart of New York City, New School seeks to provide its students with the capacity, passion and will to make the world a better place. Among its eight schools and colleges may be found three world-class art schools: Parsons School of Design, Mannes College of Music and Actors Studio Drama School. The University's colleges for liberal arts and humanities instruction include the Graduate Faculty, where the famous "University in Exile" provided a haven for European scholars fleeing totalitarianism in the 1930's, the Eugene Lang College and the founding school for adults, The New School. Finally, the Jazz & Contemporary Music Program and Milano Graduate School of Urban Management complete the University's eight divisions.

Diversity continues to have a profound impact on the history and development of New School University. According to recent census data, New York City has become the world's most diverse city and the institution's history reflects the belief that intellectual, cultural and constituent diversity are vital to a life-changing education for students, 24% of whom are students of color and additional 20% of whom are foreign nationals from 95 different countries. As these numbers suggest, New School University recruits students and faculty worldwide.

Achieving an environment where intellectual, cultural and constituent diversity thrive requires more than a numerical evaluation of student backgrounds and prior achievement. New School University is committed to an

admissions process that considers the unique experience of each applicant and examines whether both the university community at large and the student can benefit from that student's admission. New School's mission is to offer an education to women and men from all walks of life and all parts of the globe who want to pursue learning in free and creative association unconstrained by conventional boundaries, for their own self-improvement, the advancement of their professions, and the improvement of the city and world in which they live. In our view, "a university is not a machine for achieving a particular purpose or producing a particular result; it is a manner of human activity."[1]

New School University joins the brief because the admission process advocated by the plaintiffs in these cases is antithetical to what this University views as its mission and to its very vision of what a "University" should be. This is separate and distinct from its view that as a matter of law and public policy, the principles of the Bakke case should be reaffirmed herein.

NORTHWESTERN UNIVERSITY

Established in 1851, Northwestern University today is one of the country's leading private research universities,

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[1] Michael Oakeshott, "The Idea of a University," (1950) in *The Voice of Liberal Learning*, ed. Timothy Fuller (Yale University Press, 1989). "There is plenty that might properly be criticized in our universities but to quarrel with them because they are not clear what their 'function' is to make a mistake about their character. A university is not a machine for achieving a particular purpose or producing a particular result; it is a manner of human activity." p. 96

with an annual budget of more than $1 billion. Approximately 15,800 full-time and part-time students are enrolled in the University's 11 colleges and schools, which are located on campuses in Evanston and Chicago, Illinois.

Northwestern's undergraduate student body is among the country's best by almost any measure. The class entering in the fall of 2001 includes residents of all 50 states and 32 foreign countries; 83% of these students graduated in the top 10 percent of their high school classes. At Northwestern, we believe that the excellence of a university is directly proportional to the quality of its intellectual community. People from similar backgrounds can and do learn from each other. However, new approaches to knowledge are most likely to be discovered when scholars from a wide variety of backgrounds are brought together to interact with and challenge one another. In a community like ours, social diversity is a mainspring of intellectual and creative progress and contributes directly to academic excellence.

Such diversity is an important component in the education of our students. As we prepare students to assume leadership positions in our highly diverse, multicultural society, it is essential that they enjoy the opportunity to interact with and learn from other students whose backgrounds and perspectives differ from their own. From such interaction comes a broadening of understanding that will equip them, intellectually and otherwise, to function effectively in our democratic society.

In order to foster that interaction, we have designed our undergraduate, graduate and professional admissions programs to take race into account as one of many considerations in our evaluations of individuals who apply

to become students at Northwestern. No one factor is determinative, and in executing their responsibilities our admission staffs evaluate applicants' overall capacity to learn and contribute as individuals to the life of the University. We explicitly enjoin the admissions staffs not to use quotas.

Northwestern continues to believe strongly that diversity enhances the educational program and mission of the University. We believe further that the pursuit of diversity among students, faculty, and staff is related to our institutional mandate to achieve the highest order of excellence in the work of the University. Finally, our commitment to diversity is grounded in our commitment to do the right thing. We have a responsibility to extend the benefit of a Northwestern education to highly-talented young men and women from all segments of our society.

OCCIDENTAL COLLEGE

Occidental College is a nationally ranked, residential liberal arts college of 1,800 students at the forefront of interdisciplinary, intercultural education. Founded in Los Angeles in 1887, it is one of the oldest colleges in California and one of the few leading liberal arts colleges located in a major city. Its students, drawn from across the country and around the world, have won two Rhodes Scholarships and scores of other prestigious fellowships and awards over the past decade. Occidental has one of the most diverse student bodies in the country and is regarded as a national leader in the creation of what the New York Times calls "culturally competent graduates."

Diversity – whether geographic or religious, socioeconomic or cultural, ethnic or political – has always been

a fundamental part of a liberal arts education. Exposure to other ideas, to other experiences, to other ways of thinking or of seeing the world, being forced to confront your assumptions and defend your own point of view – all this is a fundamental part of an Occidental education. Our experience tallies with the results of national surveys, including one conducted by the Foundation for Academic Standards & Tradition, that have found that students prefer diverse campuses. Occidental's diversity is an important factor in our ability to attract top students, and in placing our graduates in rewarding careers. Executives from dozens of blue-chip U.S. companies agree with Don Cornwell, CEO of Granite Broadcasting Corp., member of the Business-Higher Education Forum, and a 1969 Occidental graduate: "Our audience is growing more diverse, so the communities we serve benefit if our employees are racially and ethnically diverse." In short, Occidental agrees with President Bush's view that "our institutions of higher education should reflect our diversity ... [and that] university officials have the responsibility and the obligation to make a serious, effective effort to reach out to students from all walks of life."

Like many liberal arts colleges, Occidental takes a holistic approach to admitting students, considering a wide variety of factors: standardized test scores, prior academic record, strength of the students' high school curriculum, writing samples, letters of recommendation, extracurricular activities, and special talents. Geography, gender, and ethnicity are also among the many factors considered. Test scores alone are not sufficient to assess a student's artistic, musical, or athletic abilities, nor do they measure a student's ability to succeed despite difficult personal circumstances or the challenges of being the first

person in their family to attend college. Some critics appear to equate diversity with a lowering of standards. Occidental's experience belies this view. Applications to the college have risen 138 percent over the past five years; only 43 percent of applicants were admitted last year. SAT scores have risen steadily, averaging 1300 for students admitted to the Class of 2006. Yet Occidental was ranked third nationally in diversity among liberal arts colleges in U.S. News and World Report's 2003 rankings.

Occidental joins in this brief because limiting its assessment of applicants to a narrowly defined set of test scores and grades would severely compromise its ability to pursue its unique mission and provide the best possible education for its students.

RHODE ISLAND SCHOOL OF DESIGN

Since its founding in 1877, Rhode Island School of Design (RISD) has earned a worldwide reputation as the preeminent college of art and design in the country. Today, the college enrolls approximately 1,900 undergraduate and 300 graduate students from across the United States and more than 50 countries, offering degree programs in the fine arts, architecture and design disciplines, and art education. Its more than 16,000 alumni include sculptor, performance artist, and MacArthur "genius grant" winner Janine Antoni; musician and filmmaker David Byrne; New Yorker cartoonist Roz Chast; glass artist Dale Chihuly; Tim Hunter, the designer of the flame cauldron for the Salt Lake City Olympic Games; fashion designer Nicole Miller; painter (and actor) Martin Mull; Nike shoe designer Jane Pallera; author and illustrator Chris Van Allsburg, a two-time winner of the Caldecott Award for

children's literature; Oscar-nominated filmmaker Gus Van Sant; and silhouette artist and MacArthur "genius grant" winner Kara Walker. Its current faculty include architect, author, and illustrator David Macaulay, also a winner of the Caldecott Award; and Friedrich St. Florian, the designer and architect of the National World War II Memorial.

Philosophically, one of RISD's most fundamental tenets is that artists must think globally and help to shape the world in which we live. The arts are the only truly universal language, and it often has been artists who, through that language, have built the first bridges of understanding between different nations, different cultures, different beliefs. RISD, therefore, seeks to teach its students not only the technical skills, but also the perspectives, that will enable them to fulfill that important responsibility.

To accomplish that goal, RISD must have flexibility to bring together a diverse group of students whose backgrounds, interests, and experiences can inform, inspire, and even provoke each other's work. While RISD does consider prior academic record and standardized test scores – and while it is highly selective in that regard, admitting only about one-third of its undergraduate applicants and one-fourth of its graduate applicants each year – those measures simply cannot capture, by themselves, the essence of what makes a successful art and design student, let alone a successful artist or designer. Instead, RISD necessarily follows a highly individualized review process of the type endorsed by Justice Powell in *Bakke*, taking into account an almost open-ended set of unweighted factors when it shapes each class in accordance with its mission. Those factors include (but are

neither limited to, nor dominated by) race and ethnicity, because, in RISD's view, an understanding of culture – both one's own and that of others – is the basis for the creation of culture.

Simply put, higher education is not a "reward" or "entitlement" for those students who performed the "best" in their prior academic work, and colleges and universities should not be viewed as merely passive recipients of those students, with no further interest in who they are once they arrive or after they graduate. The strength of the American system of higher education is that each institution has the freedom, and the responsibility, to adopt and actively pursue its own unique mission – to seek to change the world in some way by seeking to educate and change a few of its inhabitants. An institution cannot effectively create its desired "outputs," however, if it cannot control its "inputs." RISD joins in this brief, because an admissions program of the kind advocated by the plaintiffs in these cases, relying largely on traditional academic measures and limiting its discretion to shape its classes, would seriously compromise RISD's, and every institution's, ability to pursue its core mission.

SAINT LOUIS UNIVERSITY

Saint Louis University is a Jesuit, Catholic university ranked among the top research institutions in the nation. The University's mission is the pursuit of truth for the greater glory of God and for the service of humanity. Founded in 1818, it is the oldest university west of the Mississippi River and the second oldest Jesuit University in the United States. The University fosters the intellectual and character development of more than 11,000

students on campuses in St. Louis and Madrid, Spain. In 1944, Saint Louis University was the first university in Missouri, and the first institution of higher learning in one of the 15 former slave states, to admit African-American students. Among the University's many points of pride is its ranking as one of the country's top 50 universities in the awarding of doctoral degrees to African-American students.

As a Jesuit, Catholic university, Saint Louis University has a special commitment to ensuring that it provides opportunities for all students; and the University works diligently to recruit a racially and ethnically diverse student body. To achieve this, the University has instituted innovative programs, including a transitional program in the School of Medicine, to assist minority students in developing the knowledge and skills requisite to the achievement of a post-graduate degree. Saint Louis University's commitment to social justice and racial diversity is best achieved, we believe, by placing admission emphasis on achievement and recommendation, rather than standardized tests alone. The University also believes Justice Powell's opinion in *Bakke* is a sound decision that allows Saint Louis University and other institutions of higher learning the freedom to institute programs and policies that attract and admit a diverse student body at the undergraduate and graduate levels, and permits this University to pursue its ultimate goal of producing men and women, of all races and ethnic backgrounds, that make a difference in their communities and their world.

THE UNIVERSITY OF NOTRE DAME DU LAC

The University of Notre Dame, located outside South Bend, IN, is a highly selective, private, Catholic university founded in 1842 by the Congregation of Holy Cross. Though its 11,000 students are predominantly Catholic, the University is committed to racial, ethnic and socio-economic diversity.

Four out of five undergraduates live on campus, and the residential character of the University is one of its distinctions. Since there are no fraternities or sororities at Notre Dame, social life is centered on a student's residence hall, in which usually he or she lives for all four years. Students come to Notre Dame to learn not only how to think but also how to live, and often the experiences alumni carry from residence hall communities remain vivid over a lifetime.

In its mission statement published each year in the student handbook, Notre Dame asserts that "the University seeks to cultivate in its students not only an appreciation for the great achievements of human beings but also a disciplined sensibility to the poverty, injustice and oppression that burden the lives of so many." In its quest each year to admit an entering class from 60 nations, all 50 states, and a full-range of backgrounds, Notre Dame considers race as one of many factors in its admissions decisions. The University strives to prepare its students for a multi-cultural society in which they might prosper, spiritually and materially, and do good for mankind.